

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Anthony Dave Green,)
)
) Cr. No. 1:10-968
Movant,)
)
)
vs.)
) **OPINION AND ORDER**
United States of America,)
)
)
Respondent.)
)

Movant Anthony Dave Green is a federal inmate currently housed at FPC Duluth in Duluth, Minnesota. On March 1, 2013, Movant, proceeding pro se, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. On June 21, 2013, Respondent United States of America (the “government”) filed a motion for summary judgment. On February 10, 2015, the court issued an opinion granting summary judgment in favor of the government with the exception of Ground One, in which Movant alleged:

GROUND ONE: Ineffective assistance of counsel for not filing an appeal. Counsel was ineffective for not filing an appeal in Movant’s case. Movant requested counsel to file an appeal after sentencing, but counsel refused, stating that he was only obligated to represent the trial proceedings because of the amount of money provided for the case. On several occasions Movant advised his wife and family to ask counsel to file an appeal on Movant’s behalf, challenging the 280 grams of cocaine base.

See generally ECF No. 1052.

On June 24, 2015, the court held an evidentiary hearing in accordance with Rule 8(a) of the Rules Governing Section 2255 Proceeding. At the evidentiary hearing, all parties consented to the court’s resentencing of Movant to allow him the opportunity to appeal. An amended judgment will be entered forthwith. Accordingly, Ground One is **denied as moot**.

CERTIFICATE OF APPEALABILITY

A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir.2001). The court concludes that Movant has not made the requisite showing. Accordingly, the court **denies** a certificate of appealability.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

June 24, 2015

NOTICE OF RIGHT TO APPEAL

Movant is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.